

(5) Treatment of interest retained by donor spouse

(A) In general

In the case of any qualified terminable interest property—

- (i) such property shall not be includible in the gross estate of the donor spouse, and
- (ii) any subsequent transfer by the donor spouse of an interest in such property shall not be treated as a transfer for purposes of this chapter.

(B) Subparagraph (A) not to apply after transfer by donee spouse

Subparagraph (A) shall not apply with respect to any property after the donee spouse is treated as having transferred such property under section 2519, or such property is includible in the donee spouse's gross estate under section 2044.

(6) Treatment of joint and survivor annuities

In the case of a joint and survivor annuity where only the donor spouse and donee spouse have the right to receive payments before the death of the last spouse to die—

(A) the donee spouse's interest shall be treated as a qualifying income interest for life,

(B) the donor spouse shall be treated as having made an election under this subsection with respect to such annuity unless the donor spouse otherwise elects on or before the date specified in paragraph (4)(A),

(C) paragraph (5) and section 2519 shall not apply to the donor spouse's interest in the annuity, and

(D) if the donee spouse dies before the donor spouse, no amount shall be includible in the gross estate of the donee spouse under section 2044 with respect to such annuity.

An election under subparagraph (B), once made, shall be irrevocable.

(g) Special rule for charitable remainder trusts

(1) In general

If, after the transfer, the donee spouse is the only noncharitable beneficiary (other than the donor) of a qualified charitable remainder trust, subsection (b) shall not apply to the interest in such trust which is transferred to the donee spouse.

(2) Definitions

For purposes of paragraph (1), the term "noncharitable beneficiary" and "qualified charitable remainder trust" have the meanings given to such terms by section 2056(b)(8)(B).¹

(h) Denial of double deduction

Nothing in this section or any other provision of this chapter shall allow the value of any interest in property to be deducted under this chapter more than once with respect to the same donor.

(i) Disallowance of marital deduction where spouse not citizen

If the spouse of the donor is not a citizen of the United States—

(1) no deduction shall be allowed under this section,

(2) section 2503(b) shall be applied with respect to gifts which are made by the donor to such spouse and with respect to which a deduction would be allowable under this section but for paragraph (1) by substituting "\$100,000" for "\$10,000", and

(3) the principles of sections 2515 and 2515A (as such sections were in effect before their repeal by the Economic Recovery Tax Act of 1981) shall apply, except that the provisions of such section 2515 providing for an election shall not apply.

This subsection shall not apply to any transfer resulting from the acquisition of rights under a joint and survivor annuity described in subsection (f)(6).

(Aug. 16, 1954, ch. 736, 68A Stat. 412; Pub. L. 91-614, title I, §102(c)(3), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94-455, title XIX, §1902(a)(12)(E), title XX, §2002(b), Oct. 4, 1976, 90 Stat. 1806, 1854; Pub. L. 97-34, title IV, §403(b)(1), (2), (d)(2), Aug. 13, 1981, 95 Stat. 301, 303; Pub. L. 97-448, title I, §104(a)(2)(B), (4)-(6), Jan. 12, 1983, 96 Stat. 2380, 2381; Pub. L. 99-514, title XVIII, §1879(n)(1), Oct. 22, 1986, 100 Stat. 2910; Pub. L. 100-647, title V, §5033(b), title VI, §6152(b), Nov. 10, 1988, 102 Stat. 3672, 3725; Pub. L. 101-239, title VII, §7815(d)(1)(A), (2), Dec. 19, 1989, 103 Stat. 2415; Pub. L. 101-508, title XI, §11702(g)(1), Nov. 5, 1990, 104 Stat. 1388-515; Pub. L. 102-486, title XIX, §1941(b), Oct. 24, 1992, 106 Stat. 3036; Pub. L. 105-34, title XVI, §1604(g)(4), Aug. 5, 1997, 111 Stat. 1099.)

ADJUSTMENT OF ANNUAL EXCLUSION FOR GIFTS IN CALENDAR YEAR 2000 TO SPOUSE WHO IS NOT UNITED STATES CITIZEN

For adjustment of dollar amounts of gifts not includible in total amount of taxable gifts under subsec. (i)(2) of this section for calendar year 2000, see section 3.17 of Revenue Procedure 99-42, set out as a note under section 1 of this title.

REFERENCES IN TEXT

Section 2056 of this title, referred to in subsec. (g)(2), was subsequently amended, and section 2056(b)(8)(B) no longer defines the term "noncharitable beneficiary".

Sections 2515 and 2515A, referred to in subsec. (i)(3), were repealed by Pub. L. 97-34, title IV, §403(c)(3)(B), Aug. 13, 1981, 95 Stat. 302.

AMENDMENTS

1997—Subsec. (g)(1). Pub. L. 105-34 substituted "qualified charitable remainder trust" for "qualified remainder trust".

1992—Subsec. (e). Pub. L. 102-486, §1941(b)(1), in closing provisions, inserted at end "For purposes of this subsection, the term 'specific portion' only includes a portion determined on a fractional or percentage basis."

Subsec. (f)(3). Pub. L. 102-486, §1941(b)(2), inserted before period at end "and the rules of section 2056(b)(10) shall apply".

1990—Subsec. (i). Pub. L. 101-508 inserted at end "This subsection shall not apply to any transfer resulting from the acquisition of rights under a joint and survivor annuity described in subsection (f)(6)."

1989—Subsec. (a). Pub. L. 101-239, §7815(d)(2), struck out "who is a citizen or resident" after "Where a donor".

¹ See References in Text note below.